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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 10.9.2007.

Gurdev Singh .... Petitioner.

vs

Karnail Singh and others .... Respondents.

Judgment

Before : Hon'ble Mr. Justice R.S.Madan.

Present: Mr.H.N.S.Gill,Advocate,for the petitioner.

R.S.Madan, J.

This civil revision is directed against the order dated 18.7.2007 passed by the learned Additional District Judge (Adhoc) Fast Track, Rupnagar, in MCA No.RT-25/ 2.8.2006/ 4.5.2007, vide which she accepted the appeal of the defendants- respondents and dismissed the application under Order 39 Rules 1 and 2 CPC of the plaintiff- petitioner with costs.

Brief facts of the case are that the plaintiff along with his brothers claimed themselves to be in possession of the suit property as co-sharers for the last more than 50 years. They further averred that the possession is also open as they are not paying any *laggan* to the other co-sharers and are in forcible possession of the same. It is further case of the plaintiff that they are in hostile possession of the suit property and the suit land is not at all joint as far as possession of the property is concerned. They (plaintiff and his brothers) have also challenged certain entries of the jamabandis which according to the plaintiff were changed without their knowledge and consent. Column no.9 of the jamabandis which showed that plaintiff and his brothers are in adverse possession has wrongly been kept

blank. It is further averred that the plaintiff and his brothers are co-sharers and are also in adverse possession of the suit property and the defendants may be restrained from interfering in their possession and alienating the suit property.

Upon notice the defendants appeared and filed written statement and pleaded therein that the plaintiff and defendants are still joint in ownership as well as in possession. The disputed land is being used by all the co-shares jointly and some portion of it was used for common purposes and some was lying as banjar. The defendants also pleaded that all the co-sharers are in joint possession of the suit property but denied the open and hostile possession of the plaintiff and his brothers over the suit property. They also denied the other contents of the plaint and prayed for dismissal of the suit.

After going through the pleadings of the parties, the learned Additional Civil Judge (Senior Division), Kharar, vide order dated 14.6.2006, partly allowed the injunction application by restraining the defendants from dispossessing the plaintiff illegally and forcibly, except in due course of law but dismissed qua alienation.

Feeling dissatisfied with the verdict of the learned trial court, the defendants filed appeal before the learned Additional District Judge (Adhoc) Fast Track Court, Rupnagar, who after hearing the learned counsel for the parties was of the view that no order of injunction can be passed against the co-sharers as possession of one co-sharer is deemed to be possession of other co-sharers as well. Since the parties have admitted themselves to be co-sharers in the suit property, the question of grant of injunction against the true owner was not maintainable. Therefore, allowing

the application in part by restraining the defendants from interfering in the possession was not justified. The learned Additional District Judge accepted the appeal and dismissed the injunction application with costs.

Aggrieved by the dismissal of application, the plaintiff-petitioner has now filed this revision.

It is contended by the learned counsel for the petitioner that once the defendants- respondents admit the possession of the plaintiff over the suit property in question, the possession of the plaintiff needs to be protected by issuing injunction. In support of his argument, he referred to *Walter Louis Franklin (dead) through L.R.'s vs George Singh (dead) through L.R.'s* 1997 (1) Apex Court Journal 190 (SC), wherein it was observed that, "*in view of the admission in the title deed obtained by the respondent himself and a concurrent finding recorded by the courts below that the appellant has been in possession, the injunction shall follow.*"

This authority is, however, not attracted to the facts of the present case. The plaintiff has set up two pleas before the courts below that he and his brothers are in possession of the suit property for the last 50 years and are in hostile possession of the same. The defendants have admitted the plaintiff to be co-sharer in the suit property. Once the plea of plaintiff being a co-sharer of the suit property is accepted then the defendants were also co-sharers in the property in dispute. As the property is joint, and one co-sharer is in possession, no injunction can be issued in favour of the plaintiff and against the defendants, who is also co-sharer. Another argument which was rightly rejected by the trial court with respect to the claim of the plaintiff and his brothers that they have become owner of the suit property by way of adverse possession, was not pressed before this court having

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already been rejected by the courts below.

After going through the orders passed by the first appellate court, I am in complete agreement with the proposition dealt with by the learned Additional District Judge in her order that no injunction can be granted to a co-sharer against the other co-sharers as he shall be deemed to be in joint possession along with other co-sharers in the suit land.

No ground for interference is made out. This revision is, accordingly, dismissed.

10.9.2007. (R.S.Madan)
vs. Judge.